

Interstate Commerce Commission  
Washington, D. C.

Gentlemen:

10173  
RECORDATION NO. .... Filed 1425

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INTERSTATE COMMERCE COMMISSION

9-064A085

36-79  
50.00  
Washington, D. C.

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and three counterparts of an Equipment Lease dated as of February 15, 1979.

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor under Equipment  
Lease:

Harris Trust and Savings Bank,  
as Trustee under D & H Trust  
No. 79-1  
111 West Monroe Street  
Chicago, Illinois 60609

Lessee under Equipment  
Lease:

Delaware and Hudson Railway  
Company  
Albany, New York 12207

The undersigned is the Lessor under the Equipment Lease and has knowledge of the matters set forth therein.

Please return the original and two copies of the Equipment Lease to Robert C. Nash, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

HARRIS TRUST AND SAVINGS BANK,  
as Trustee under D & H Trust  
No. 79-1

By

*PS Mason*  
Trustee as aforesaid

Enclosures

RECEIVED  
MAR 6 11 33 AM '79  
I.C.C.  
FEE OPERATION BR.

DESCRIPTION OF EQUIPMENT

<u>Description</u>	<u>Quantity</u>	<u>Car Nos.</u>
70-ton 65'6" long, hi-side, AAR type GBS Gondola Cars	97	DH 14700 to 14762, both inclusive, DH 14764 to 14792, both inclusive, DH 14794 to DH 14797, both inclusive, and DH 14799
70-ton 2880 cubic foot capacity AAR type HT Hopper Cars	91	DH 9201 to 9291, both inclusive

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INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of February 15, 1979

Between

HARRIS TRUST AND SAVINGS BANK,  
as Trustee under D & H Trust No. 79-1

LESSOR

and

DELAWARE AND HUDSON RAILWAY COMPANY,

LESSEE

(D & H Trust No. 79-1)  
(97 Gondola Cars and 91 Hopper Cars)

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Attachments to Equipment Lease:

Schedule A-1- Description of Items of Equipment  
Schedule A-2- Description of Items of Equipment  
Schedule B - Certificate of Acceptance  
Schedule C-1- Schedule of Casualty Value-Gondola Cars  
Schedule C-2- Schedule of Casualty Value-Hopper Cars

#### SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedules A-1 and A-2 hereto and will promptly add and thereafter keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company,  
as Owner-Trustee"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any Assignee, if any. The Lessee will replace promptly any names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

#### SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY EITHER THE LESSOR OR THE TRUSTORS, EACH EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT

OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the vendor or manufacturer thereof, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

## SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor, any Assignee, if any, thereof and the Trustors and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission



(whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee a residual value in the Equipment nor do they guarantee the payment of any indebtedness for borrowed money from time to time incurred by the Lessor and secured by an assignment of rentals payable hereunder pursuant to Section 16 hereof.

6.2. Continuation of Indemnities and Assumptions.

The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee shall have the option with respect to any Item of Equipment of either (a) making such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor, or (b) upon not less than 45 days' prior written notice, pay on a rent payment date the Fixed Rental installment due on such rent payment date, together with any rentals or other sums due on or prior to such date in respect of any such Item then remaining unpaid plus a sum equal to the greater of Casualty Value of such Item as of the date of such payment or the Fair Market Value thereof (as hereinafter defined).

"Fair Market Value" of any Item shall be determined on the basis of, and shall be equal in amount to the value which would obtain in an arm's-length transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller under no compulsion to sell. Such Fair Market Value shall be determined by mutual written agreement of the Lessor and the Lessee or, upon notice to the Lessee by the Lessor, at any time prior to such mutual agreement, shall be determined by two independent appraisers, one chosen by the Lessor and one chosen by the Lessee. If such appraisers cannot agree on such value within 60 days after the date of appointment thereof, then such value shall be determined by an appraiser chosen by the American Arbitration Association, which appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The expenses and fees of any appraiser or appraisers shall be borne by the Lessee.

#### SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and any Assignee, if any, which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a

result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any Assignee, if any, in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

#### SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. The Lessee will, at its sole expense, cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 (formerly Section 20c of the Interstate Commerce Act) and in such other places within or without the United States as the Lessor or any Assignee, if any, may reasonably request and will furnish the Lessor and any such Assignee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or any Assignee, if any, for the purpose of protecting the Lessor's title to, or any such Assignee's security interest in, any Item of Equipment to the satisfaction of the Lessor's or any such Assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and any such Assignee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. Payment of State and Local Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor, any Assignee, if any, and the Trustors (the "Indemnitees") for collection or other charges and will be free of expense to the Indemnitees with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal, state or local income tax [and, to the extent that any respective Indemnatee receives credit therefor against its United States Federal or state income tax liability, any foreign income tax of such Indemnatee] payable by any respective Indemnatee in consequence of the receipt of payments provided herein and other than the aggregate of all franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which such Indemnatee has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and

any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnatee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnatee therein or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Indemnatee, adversely affect the interest of any Indemnatee hereunder. If any Impositions shall have been charged or levied against any Indemnatee directly and paid by such Indemnatee after such Indemnatee shall have given written notice thereof to the Lessee and the same shall have remained unpaid for a period of ten business days thereafter, the Lessee shall reimburse such Indemnatee on presentation of invoice therefor. Prior to making such payment, such Indemnatee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either prepare and file such reports in such manner as to show as required the interests of each Indemnatee in such Items of Equipment or, if it shall not be permitted to file the same, it will notify each Indemnatee of such reporting requirements, prepare such reports in such manner as shall be satisfactory to each Indemnatee and deliver the same to each Indemnatee within a reasonable period prior to the date the same is to be filed.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

## SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts

and against risks customarily insured against by railroad companies in respect of similar equipment and in any event comparable to those risks insured against by the Lessee in respect of similar equipment owned by it. The policies of insurance required under this Section 11.1 shall be valid and enforceable policies issued by insurers of recognized responsibility comparable to the Lessee's present insurers. With respect to all public liability insurance, the Lessee shall cause each policy to cover the respective interests of the Lessor and any Assignee, if any, for claims arising from the ownership, operation, maintenance or use of the Equipment and to name the Lessor and any such Assignee as additional insureds.

Upon the execution of each Certificate of Acceptance, and thereafter not less than 10 days prior to the expiration dates of any expiring policies theretofore furnished under this Section 11.1, originals of the policies and satisfactory evidence of the payment of premiums thereon shall be delivered by the Lessee to the Lessor and any Assignee, if any, except that the Lessor and any such Assignee may accept certificates of insurance from a recognized insurance broker of national standing, which certificates shall be satisfactory to the Lessor and any such Assignee. Such policies may be blanket policies covering other equipment not covered by this Lease, provided that the aforementioned certificate shall indicate that Equipment leased hereunder is included therein and covered thereby to the full extent of amounts herein required. All such policies shall contain an agreement by the insurers that such policies shall not be cancelled without at least 10 days' prior written notice to the Lessor and any Assignee, if any, and that the insurer will give notice to the Lessor and any such Assignee in the event of nonpayment of premium by the Lessee when due.

If and to the extent received by the Lessor, any net insurance proceeds (excluding public liability insurance) resulting from insurance carried by the Lessee or condemnation payments in respect of the Equipment suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 11. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made a Casualty Value payment pursuant to this Section 11 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such net insurance proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to an Item paid by the Lessee unless an Event of Default or other event which with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 11.3. The balance of such net insurance proceeds or condemnation payments shall remain the property of the Lessor. All net insurance proceeds (excluding public liability insurance) received by the Lessor or the Lessee with respect to an Item not suffering a Casualty Occurrence shall be applied in payment of the cost of repairing

the damage to such Item, but no such proceeds shall be paid to the Lessee until the Lessor and any Assignee, if any, shall have received a certificate signed by an authorized officer of the Lessee to the effect that such damage has been fully repaired; and any balance remaining after the completion of such repairs shall be paid to the Lessee unless an Event of Default or Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 11.3.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor, any Assignee, if any, and the Trustors in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3. Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its knowledge of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee may retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request

to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C-1 or C-2, as the case may be, opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

## SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before the first May 1 which occurs more than four months following the date of this Lease, the Lessee will furnish to the Lessor, any Assignee, if any, and the Trustors an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor, any Assignee, if any, and the Trustors each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 180 days from the date the last Item of Equipment is delivered to storage tracks pursuant to this Section 13 and transport the same at any time within such 180-day period to any reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. The Lessee covenants that, at the time any Item of Equipment is returned to the Lessor in the manner above provided, it will then be in compliance with all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and all standards recommended by the A.A.R. applicable to railroad equipment of the character of the Equipment. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment. All amounts earned in respect of the Equipment after the date of expiration of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment



for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

#### SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or Casualty Value provided in Section 2 or 11 hereof and such default shall continue for five days;

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof;

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(d) Any representation or warranty made by the Lessee herein or in any statement or certificate furnished to the Lessor or either of the Trustors pursuant to or in connection with this Lease is untrue in any material respect as of the date of issuance or making thereof;

(e) Any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations

incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor and/or any Assignee, as the case may be, at its or their option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the

following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 5.00% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess of any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, the Fair Rental Value for any Item of Equipment shall be determined in the appraisal arrangements specified in Section 18.2(b) hereof and the Fair Market Value for any Item of Equipment shall be determined in a similar manner with appropriate adjustments for sale rather than rental, with any appraisal expenses to be borne by the Lessee; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law.

The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, each Trustor, Citibank, N.A., as trustee (the "General Mortgage Trustee") under the First and General Mortgage dated as of May 1, 1963, as supplemented (the "General Mortgage") between the Lessee and the General Mortgage Trustee, the United States Railway Association ("USRA") and the United States of America, acting through the Federal Railway Administrator ("FRA"), as mortgagees of the Mortgage dated March 15, 1976, as supplemented (the "Second Mortgage") between the Lessee, as mortgagor, and USRA and FRA, as mortgagees, and any Assignee, if any, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

## SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any Assignee, if any, shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select; provided that, in the event the Lessor shall designate storage tracks which are then unavailable either because such tracks are then being used to store equipment owned by a third party pursuant to a contractual obligation of the Lessee to provide storage therefor or because the storage of the Items of Equipment on such tracks would materially impair

the ability of the Lessee to meet its obligations to perform services as a common carrier to the public, then the Lessee agrees to so store the Items of Equipment upon such other storage tracks as shall then be so available and nearest to such storage tracks designated by the Lessor;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport the Equipment to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may direct in writing.

All amounts earned in respect of the Equipment after the date of termination of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such Assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such Assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such Assignee for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such Assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such Assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such Assignee, the Lessee shall be unconditionally and absolutely obligated to pay such Assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said Assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said Assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor or either Trustor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance] and 20.3 hereof which shall remain enforceable by the Lessor and/or the Trustors, as the case may be), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said Assignee, the Lessor and each Trustor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment, except as permitted by Section 17.2 hereof. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession on Lines Other Than Lessee's Own. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation, a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract and also to permit the use of any Item of Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease. Notwithstanding the foregoing, the Lessee shall at no time throughout the term of this Lease assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation or maintenance thereof) outside the continental United States or Canada. The leasehold interest of the Lessee may be assigned to the General Mortgage Trust pursuant to and as required by the General Mortgage and, upon satisfaction of the General Mortgage, to the mortgagees of the Second Mortgage, provided that the right, title and interest of the General Mortgage Trust and the mortgagees under the Second Mortgage in and to the Lessee's leasehold interest hereunder arising by, through and under such respective assignments shall be subject to all of the duties, liabilities and obligations of the Lessee under this Lease. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon

the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.

18.1. Right of First Refusal. Unless an Event of Default or Default shall have occurred and be continuing, the Lessor shall not, at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) sell, transfer or otherwise dispose of the Equipment unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase in the aggregate all, but not less than all, of the Items of Equipment;

(b) the Lessor shall have given the Lessee notice (i) setting forth in detail the identity of such purchaser or purchasers, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Items of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Lessee shall not have notified the Lessor, within 15 days following receipt of such notice, of its election to purchase such Items of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Items of Equipment, the Lessor may sell such Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice. Notwithstanding the foregoing provisions of this Section 18.1, the Lessor may, if the Lessee has not renewed this Lease pursuant to Section 18.2 hereof, lease the Equipment at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) without first offering to lease the Equipment to the Lessee.

18.2. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:



(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for additional successive renewal terms of at least one year each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 120 days prior to the commencement of any renewal term provided for in this Section 18.2; and

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. If on or before 90 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Item of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 60 days prior to the date of commencement of the renewal term elected by the Lessee, determined on the basis of an appraisal made by a third appraiser chosen by the American Arbitration Association. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 10.5% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. MISCELLANEOUS.

20.1. Limitations of Liability. It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by the Lessee in its corporate capacity and that nothing herein contained shall be construed as creating any liability on any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Lessee to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessor and the Trustors and by each and every person now or hereafter claiming by, through or under the Lessor or the Trustors.

20.2. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor: Harris Trust and Savings Bank  
111 West Monroe Street  
Chicago, Illinois 60690

Attention: Indenture Trust Division

If to the Trustors: Northwestern National Life  
Insurance Company  
Post Office Box 20  
Minneapolis, Minnesota 55440

Attention: Securities Department

Central Life Assurance Company  
Post Office Box 1555  
Des Moines, Iowa 50306

Attention: Securities Department

If to the Lessee: Delaware and Hudson Railway  
Company  
40 Beaver Street  
Albany, New York 12207

Attention: President

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

20.3. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor, either Trustor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the Assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 10.5% per annum.

20.4. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

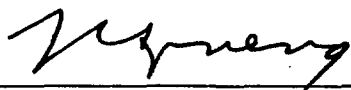
20.5. Law Governing. This Lease shall be construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

20.6. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

20.7. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

HARRIS TRUST AND SAVINGS BANK,  
not individually but solely as  
Trustee under D & H Trust No. 79-1

By   
Its VICE PRESIDENT

[CORPORATE SEAL]

ATTEST:

  
ASSISTANT Secretary

DELAWARE AND HUDSON RAILWAY COMPANY

By A. D. Guir  
Its Vice President-Finance

[CORPORATE SEAL]

ATTEST:

R. T. Murray  
Assistant Secretary

STATE OF ILLINOIS     )  
                              )   SS  
COUNTY OF COOK        )

On this 27<sup>th</sup> day of February, 1979, before me personally appeared J. L. SPRENG, to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT of HARRIS TRUST AND SAVINGS BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lanette C. Seay  
Notary Public

[NOTARIAL SEAL]

My commission expires: NOVEMBER 29, 1980

STATE OF NEW YORK     )  
                              )   SS  
COUNTY OF Albany     )

On this 28<sup>th</sup> day of February, 1979, before me personally appeared DD MUIK, to me personally known, who being by me duly sworn, says that he is the Vice President - Finance of DELAWARE AND HUDSON RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

George H. Kleinberger  
Notary Public

[NOTARIAL SEAL]

My commission expires:

GEORGE H. KLEINBERGER  
Notary Public - State of New York  
Qualified in Schenectady County  
Reg. No. 2144350  
Commission Expires March 30, 1979

DESCRIPTION OF ITEMS OF EQUIPMENT

Description and Mark and  
Number of Items of  
Equipment:

Ninety-seven (97) 70-ton 65'6" long,  
hi-side, AAR type GBS Gondola Cars  
marked and numbered DH 14700 to  
14762, both inclusive, DH 14764 to  
14792, both inclusive, DH 14794 to  
14797, both inclusive and DH 14799

Purchase Price:

\$9,326.00 per Item (\$904,622.00 for  
ninety-seven Items)

Fixed Rental:

Twelve (12) monthly rental payments  
in arrears, each equal to \$73.83 per  
Item (\$7,161.51 for 97 Items) followed  
by one hundred twenty (120) monthly  
rental payments in arrears, each equal  
to \$104.23 per Item (\$10,110.31 for 97  
Items).

(D & H Trust No. 79-1)

SCHEDULE A-1  
(to Equipment Lease)

DESCRIPTION OF ITEMS OF EQUIPMENT

Description and Mark and  
Number of Items of  
Equipment:

Ninety-one (91) seventy (70) ton  
2880 cubic foot capacity AAR type  
HT Hopper Cars marked and numbered  
DH 9201 to 9291, both inclusive

Purchase Price:

\$9,249.00 per Item (\$841,659 for  
ninety-one Items)

Fixed Rental:

Twelve (12) monthly rental payments  
in arrears, each equal to \$73.22 per  
Item (\$6,663.02 for 91 Items) followed  
by one hundred twenty (120) monthly  
rental payments in arrears, each  
equal to \$109.47 per Item (\$9,961.77  
for 91 Items).

(D & H Trust No. 79-1)

SCHEDULE A-2  
(to Equipment Lease)

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

TO: Harris Trust and Savings Bank,  
as Trustee under D & H  
Trust No. 79-1 (the "Lessor")

I, a duly appointed and authorized representative of Delaware and Hudson Railway Company (the "Lessee") under the Equipment Lease dated as of February 15, 1979 between the Lessor and the Lessee, do hereby certify that I have received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT: Gondola Cars and Hopper Cars

DATE ACCEPTED:

NUMBER OF UNITS: 97 Gondola Cars and 91 Hopper Cars

MARKED AND NUMBERED: The Gondola Cars are marked and numbered DH 14700 to 14762, both inclusive, DH 14764 to 14792, both inclusive, DH 14794 to 14797, both inclusive, and DH 14799. The Hopper Cars are marked and numbered DH 9201 to 9291, both inclusive.

Dated: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Authorized Representative  
of the Lessee

(D & H Trust No. 79-1)

SCHEDULE B  
(to Equipment Lease)



SCHEDULE OF CASUALTY VALUE

Gondola Cars

The Casualty Value for a Gondola Car payable on the Term Lease Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the amount set forth opposite such date in the following schedule:

<u>Term Lease Commencement Date or Number of Fixed Rental Payment Date on Which Casualty Value is Paid</u>	<u>Amount Payable as Casualty Value</u>	<u>Term Lease Commencement Date or Number of Fixed Rental Payment Date on Which Casualty Value is Paid</u>	<u>Amount Payable as Casualty Value</u>
Term Lease Commencement		34	\$8,598.59
Date	\$9,326.00	35	8,562.43
1	9,326.00	36	8,525.99
2	9,326.00	37	8,489.26
3	9,326.00	38	8,452.24
4	9,326.00	39	8,414.92
5	9,326.00	40	8,377.31
6	9,326.00	41	8,339.40
7	9,326.00	42	8,301.19
8	9,326.00	43	8,262.68
9	9,326.00	44	8,223.86
10	9,326.00	45	8,184.74
11	9,326.00	46	8,145.31
12	9,326.00	47	8,105.56
13	9,295.60	48	8,065.50
14	9,264.96	49	8,025.12
15	9,234.08	50	7,984.42
16	9,202.95	51	7,943.40
17	9,171.58	52	7,902.06
18	9,139.96	53	7,860.39
19	9,108.09	54	7,818.39
20	9,075.97	55	7,776.06
21	9,043.59	56	7,733.39
22	9,010.96	57	7,690.38
23	8,978.07	58	7,647.03
24	8,944.92	59	7,603.34
25	8,911.50	60	7,559.30
26	8,877.82	61	7,514.91
27	8,843.87	62	7,470.17
28	8,809.65	63	7,425.08
29	8,775.16	64	7,379.63
30	8,740.40	65	7,333.82
31	8,705.36	66	7,287.65
32	8,670.05	67	7,241.11
33	8,634.46	68	7,194.21

(D & H Trust No. 79-1)

SCHEDULE C-1  
(to Equipment Lease)

Term Lease Commencement Date or Number of Fixed Rental Payment Date on Which Casualty Value is Paid	Amount Payable as Casualty Value	Term Lease Commencement Date or Number of Fixed Rental Payment Date on Which Casualty Value is Paid	Amount Payable as Casualty Value
69	\$7,146.93	101	\$5,419.31
70	7,099.28	102	5,357.98
71	7,051.25	103	5,296.17
72	7,002.84	104	5,233.87
73	6,954.05	105	5,171.07
74	6,904.87	106	5,107.78
75	6,855.30	107	5,043.99
76	6,805.34	108	4,979.69
77	6,754.99	109	4,914.88
78	6,704.24	110	4,849.56
79	6,653.09	111	4,783.72
80	6,601.53	112	4,717.36
81	6,549.56	113	4,650.48
82	6,497.18	114	4,583.07
83	6,444.39	115	4,515.12
84	6,391.18	116	4,446.63
85	6,337.55	117	4,377.60
86	6,283.49	118	4,308.03
87	6,229.00	119	4,237.91
88	6,174.08	120	4,167.23
89	6,118.73	121	4,095.99
90	6,062.94	122	4,024.19
91	6,006.71	123	3,951.82
92	5,950.03	124	3,878.88
93	5,892.90	125	3,805.36
94	5,835.32	126	3,731.26
95	5,777.29	127	3,656.57
96	5,718.80	128	3,581.29
97	5,659.84	129	3,505.41
98	5,600.42	130	3,428.93
99	5,540.53	131	3,351.85
100	5,480.16	132 and thereafter	3,274.16

# SCHEDULE OF CASUALTY VALUE

## Hopper Cars

The Casualty Value for a Hopper Car payable on the Term Lease Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the amount set forth opposite such date in the following schedule:

Term Lease Commencement Date or Number of Fixed Rental Payment Date on Which Casualty Value is Paid	Amount Payable as Casualty Value	Term Lease Commencement Date or Number of Fixed Rental Payment Date on Which Casualty Value is Paid	Amount Payable as Casualty Value
Term Lease Commencement Date	\$9,249.00	34	\$8,381.57
1	9,249.00	35	8,338.45
2	9,249.00	36	8,294.99
3	9,249.00	37	8,251.19
4	9,249.00	38	8,207.04
5	9,249.00	39	8,162.54
6	9,249.00	40	8,117.69
7	9,249.00	41	8,072.49
8	9,249.00	42	8,026.93
9	9,249.00	43	7,981.01
10	9,249.00	44	7,934.72
11	9,249.00	45	7,888.07
12	9,249.00	46	7,841.05
13	9,212.75	47	7,793.65
14	9,176.21	48	7,745.88
15	9,139.38	49	7,697.73
16	9,102.26	50	7,649.20
17	9,064.85	51	7,600.29
18	9,027.14	52	7,550.99
19	8,989.13	53	7,501.30
20	8,950.82	54	7,451.22
21	8,912.21	55	7,400.74
22	8,873.29	56	7,349.86
23	8,834.07	57	7,298.58
24	8,794.54	58	7,246.89
25	8,754.69	59	7,194.79
26	8,714.53	60	7,142.28
27	8,674.05	61	7,089.35
28	8,633.25	62	7,036.00
29	8,592.13	63	6,982.23
30	8,550.68	64	6,928.04
31	8,508.90	65	6,873.42
32	8,466.79	66	6,818.36
33	8,424.35	67	6,762.87
		68	6,706.94

(D & H Trust No. 79-1)

SCHEDULE C-2  
(to Equipment Lease)

Term Lease Commencement  
Date or Number of Fixed  
Rental Payment Date on  
Which Casualty Value is  
Paid

Amount  
Payable as  
Casualty Value

Term Lease Commencement  
Date or Number of Fixed  
Rental Payment Date on  
Which Casualty Value is  
Paid

Amount  
Payable as  
Casualty Value

69	\$6,650.57	101	\$4,590.54
70	6,593.75	102	4,517.41
71	6,536.48	103	4,443.70
72	6,478.76	104	4,369.41
73	6,420.58	105	4,294.53
74	6,361.94	106	4,219.06
75	6,302.84	107	4,142.99
76	6,243.27	108	4,066.32
77	6,183.23	109	3,989.04
78	6,122.71	110	3,911.15
79	6,061.71	111	3,832.64
80	6,000.23	112	3,753.51
81	5,938.26	113	3,673.76
82	5,875.80	114	3,593.37
83	5,812.85	115	3,512.35
84	5,749.40	116	3,430.69
85	5,685.45	117	3,348.38
86	5,620.99	118	3,265.42
87	5,556.02	119	3,181.80
88	5,490.54	120	3,097.52
89	5,424.54	121	3,012.57
90	5,358.01	122	2,926.95
91	5,290.96	123	2,840.65
92	5,223.38	124	2,753.67
93	5,155.26	125	2,666.00
94	5,086.60	126	2,577.64
95	5,017.40	127	2,488.58
96	4,947.65	128	2,398.81
97	4,877.35	129	2,308.33
98	4,806.49	130	2,217.13
99	4,735.07	131	2,125.21
100	4,663.09	132 and thereafter	2,032.56

Interstate Commerce Commission  
Washington, D.C. 20423

3/6/79

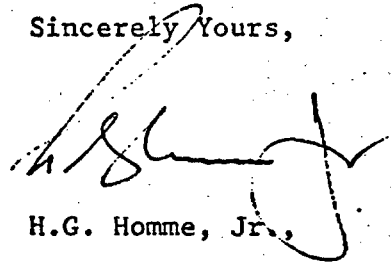
OFFICE OF THE SECRETARY

Robert C. Nash  
Chapman And Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on 3/5/79 at 11:40am  
and assigned recordation number(s) 10173

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)